

## **2013 DRAFTING REQUEST**

### **Bill**

Received:	<b>1/15/2013</b>	Received By:	<b>mgallagh</b>
Wanted:	<b>As time permits</b>	Same as LRB:	<b>-3592</b>
For:	<b>John Jagler (608) 266-9650</b>	By/Representing:	<b>Mark Florian</b>
May Contact:		Drafter:	<b>mgallagh</b>
Subject:	<b>Occupational Reg. - misc Occupational Reg. - prof lic</b>	Addl. Drafters:	
		Extra Copies:	<b>MED</b>

Submit via email: **YES**  
Requester's email: **Rep.Jagler@legis.wisconsin.gov**  
Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Changes to statutory definition of dentistry

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### **Instructions:**

See attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mgallagh 2/12/2013	evinz 2/18/2013	rschluet 2/18/2013	_____			
/P1	mgallagh 6/26/2013	evinz 6/28/2013	rschluet 6/28/2013	_____	srose 2/18/2013		
/P2	mgallagh 10/9/2013	csicilia 10/9/2013	rschluet 10/9/2013	_____	sbasford 6/28/2013		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	mgallagh 11/7/2013	evinz 11/7/2013		_____	srose 10/9/2013		
/1			jfrantze 11/7/2013	_____	sbasford 11/7/2013	mbarman 11/14/2013	

FE Sent For:

 Not  
Needed

&lt;END&gt;

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Vers. Drafted

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Submitted

Jacketed

Required

/P3

\_\_\_\_\_  
\_\_\_\_\_  
srose

10/9/2013

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1/1 eev

11/7/13

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/P2				_____	sbasford 6/28/2013		

P3 js 10/9/13

FE Sent For:

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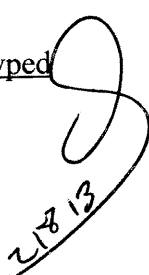
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/?	mgallagh	/pl eev 2/15/13					

FE Sent For:

<END>

## Gallagher, Michael

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**From:** Florian, Mark  
**Sent:** Wednesday, January 16, 2013 9:52 AM  
**To:** Gallagher, Michael  
**Subject:** RE: Dentistry Definition Bill Draft

Hello Mike,

Thank you for taking the time to look over the language for us. I realize that it's a pretty busy time for you and we really appreciate the help. I'll follow up with you on the draft as soon as the Representative has a chance to review your comments.

All the best,

Mark Florian  
Office of Representative John Jagler  
37th Assembly District  
(608) 266-9650

---

**From:** Gallagher, Michael  
**Sent:** Tuesday, January 15, 2013 3:06 PM  
**To:** Florian, Mark  
**Subject:** RE: Dentistry Definition Bill Draft

Mark:

There are several problems with the language proposed in the attachment. Here are the primary issues:

First, I cannot use "and/or," and I cannot use parentheses, but I can fix that.

Second, the education and ethics language is non-definitional, i.e. those are substantive requirements, and those requirements are already set forth elsewhere in the chapter. We avoid putting that kind of language in definitions because it makes the actual substantive requirements of the law unclear. Here is how that happens: "Dentist" is defined in the statute as "an individual who practices dentistry." Therefore, if we limit the definition of dentistry to acts performed "by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law," as proposed in the attachment, not only do the definitions become circular, i.e. a dentist is someone who practices dentistry and dentistry is the practice of a dentist, but the proposed language also raises the question of whether the board can discipline a dentist for conduct that is not "within the scope of his/her education, training and experience" or "in accordance with the ethics of the profession and applicable law," i.e. professional misconduct, because we've, by definition, removed such conduct from the scope of the practice of dentistry, which is what the board regulates. Also, note that if you limit the definition of dentistry to good dentistry, as the proposed language seems to do, then someone who is not licensed to practice dentistry can perform bad dentistry without running afoul of the statute. That is a serious unintended consequence of the proposed language.

Third, if you look at the current definition of dentistry in the statutes under s. 447.01 (8) (a) to (h), the only substance added in the proposed language concerns maxillofacial surgery, which is not explicitly listed under s. 447.01 (8) (a) to (h), but I believe falls under the scope of s. 447.01 (8) in any case. Everything else in the proposed language is already pretty much explicitly contained in the statute.

Nevertheless, I can do what you wish and just try to make the language fit our drafting conventions as much as possible. The better practice would be for us to sit down and go through the definition under s. 447.01 (8) (a) to (h) to determine what language you want added or removed to achieve the Representative's intent. It would be very helpful if you could explain the intent behind the requested change, so that I can put together a draft that achieves that intent. Please let me know how you would like to proceed. I'd be happy to discuss any issues or questions you may have.

Thanks.

Mike

**Michael P. Gallagher**  
Legislative Attorney  
Legislative Reference Bureau  
(608) 267-7511  
[michael.gallagher@legis.wisconsin.gov](mailto:michael.gallagher@legis.wisconsin.gov)

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**From:** Florian, Mark  
**Sent:** Tuesday, January 15, 2013 2:14 PM  
**To:** Gallagher, Michael  
**Subject:** Dentistry Definition Bill Draft

Hello Michael,

I have been instructed to ask you to create a draft with the instructions included in the attached word document, exactly as is. If you have any questions or need any more information from our office please do not hesitate to ask. Thank you so much for your time!

Best,

Mark Florian  
Office of Representative John Jagler  
37th Assembly District  
(608) 266-9650

## Gallagher, Michael

---

**From:** Florian, Mark  
**Sent:** Tuesday, January 15, 2013 2:14 PM  
**To:** Gallagher, Michael  
**Subject:** Dentistry Definition Bill Draft  
**Attachments:** Dentistry Definition.docx

Hello Michael,

I have been instructed to ask you to create a draft with the instructions included in the attached word document, exactly as is. If you have any questions or need any more information from our office please do not hesitate to ask. Thank you so much for your time!

Best,

Mark Florian  
Office of Representative John Jagler  
37th Assembly District  
(608) 266-9650

Delete 447.01(8)

Create:

Dentistry is defined as the evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1173/P1dn

MPG:.....

eev

(date)

Representative Jagler:

Please review this draft carefully to ensure that it is consistent with your intent.

The drafting instructions were to replace the current definition of dentistry under s. 447.01 (8), stats., with the following language:

Dentistry is defined as the evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law.

Consistent with the drafting instructions, the draft repeals s. 447.01<sup>✓</sup> (8) (a) to (h), stats., and amends the language of the general definition of dentistry under s. 447.01 (8) (intro.), stats., to include specific elements from the above proposed language. For the reasons I discuss below, however, not all of that language is represented in the draft.

1. We cannot use "and/or," or similar constructions, or parentheses in the statutes. That is fixed in the draft.

2. By defining dentistry as services provided by a dentist, the definition becomes circular because, under s. 447.01 (7), stats., a dentist is someone who practices dentistry. The circular definition is a problem in part because it renders unclear the prohibition against the unlicensed practice of dentistry, i.e., a person may not practice dentistry without being a licensed dentist, but <sup>now</sup> by definition, a person is not ~~practicing~~ <sup>practicing</sup> dentistry if the person is not a dentist. Therefore, it is better to continue to define dentistry based on the nature of the practice rather than the title of the practitioner. Please let me know how you would like to proceed.

3. The proposed language defining dentistry as being within the scope of a dentist's education, etc., and in accordance with the ethics of the profession is nondefinitional. Instead, that language presents substantive requirements—that a dentist must practice consistent with his or her professional education and controlling ethical

standards. LRB's general policy is to avoid putting substantive requirements in a definition because doing so makes it difficult to understand the requirements of the law and may lead to unintended consequences. For example, certainly someone who performs the acts of a dentist badly—who does not perform those acts within the scope of a satisfactory education and in accordance with the ethics of the profession—is not excluded from regulation by the Dentistry Examining Board. Yet the inclusion of that language in the definition confuses the law's meaning and the examining board's authority to discipline professional misconduct. Also, that language is unnecessary because the relevant substantive requirements already exist elsewhere in the statutes and administrative rules.

If your intent is to make specific changes to the substantive requirements for the practice of dentistry, then we should discuss your intent and how best to achieve that intent by amending the substantive legal requirements for the practice of dentistry in Wisconsin.

4. The current definition of dentistry in the statutes under s. 447.01 (8) (a) to (h) already contains most of the elements included in the proposed language. There are, however, significant exceptions. For example, under current law, surgery is not explicitly included under the definition of dentistry, although that definition can reasonably be interpreted to include surgery. In particular, see s. 447.01 (8) (intro.), (f), and (g). Consistent with the drafting instructions, the draft explicitly includes surgery. *current*

5. What is more significant is that the definition of dentistry under current law does not include language extending the practice of dentistry, including surgery, to the "maxillofacial area." Consistent with the proposed language in the drafting instructions, the definition in this draft incorporates that additional element. Note, however, that by doing so, the draft expands or broadens the scope of dentistry in Wisconsin.

Under current law, dentistry is limited to "the human oral cavity or its adjacent tissues and structures." But, the human maxillofacial area is larger or includes more than "the human oral cavity or its adjacent tissues and structures." Webster's defines "maxillofacial" as "of, relating to, or treating the maxilla and the face" (my emphasis). The maxilla consist essentially of the upper jaw. *I*

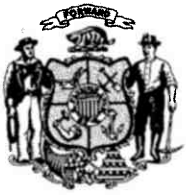
According to Webster's, the maxillofacial area includes the face, but the definition of dentistry under current law only includes the oral cavity itself or its adjacent tissues and structures, not the whole face. Therefore, for example, while procedures affecting the bones of the eye socket could not qualify as dentistry under current law because those bones are not adjacent to the oral cavity, procedures affecting the bones of the eye socket could be considered dentistry under the proposed language because the maxillofacial area includes the entire face. If you want to include a narrower definition of "maxillofacial area" for purposes of the definition of dentistry in this draft, please let me know. Also, let me know if, instead, you are satisfied with the language under current law limiting dentistry to the oral cavity and adjacent tissues and structures and want to remove "maxillofacial area" from the draft. *I*



Please let me know how you would like to proceed with this request. I'd be happy to sit down and discuss any questions or concerns you may have.

Thank you.

Michael Gallagher  
Legislative Attorney  
Phone: (608) 267-7511  
E-mail: michael.gallagher@legis.wisconsin.gov



Leev

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-Note

gen cat

1 AN ACT **relating to:** the definition of dentistry for professional licensing  
2 purposes.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3 SECTION 1. 447.01 (8) (intro.) of the statutes is amended to read:

4 447.01 (8) (intro.) "Dentistry" means the examination, evaluation, diagnosis,  
5 treatment, planning including surgery, prevention, or care of diseases, disorders, or  
6 conditions of or within the human oral cavity or its adjacent tissues and structures  
7 or the maxillofacial area. "Dentistry" includes any of the following:

History: 1989 a. 56; 1989 a. 349 ss. 4, 5, 8 to 10.

8 SECTION 2. 447.01 (8) (a) of the statutes is repealed.

9 SECTION 3. 447.01 (8) (b) of the statutes is repealed.

prevention, or

renumbered 447.01 (8) and

↓  
↓  
-NEYS-

<sup>X</sup>

1      **SECTION 4.** 447.01 (8) (c) of the statutes is repealed.

2            **SECTION 5.** 447.01 (8) (d) of the statutes is repealed.

3            **SECTION 6.** 447.01 (8) (e) of the statutes is repealed.

4            **SECTION 7.** ~~447.01~~<sup>x</sup> (8) (f) of the statutes is repealed.

5            **SECTION 8.** 447.01 (8) (g) of the statutes is repealed.

6                    **SECTION 9.** 447.01 (8) (h) of the statutes is repealed.

7 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1173/P1dn  
MPG:eev:rs

February 18, 2013

Representative Jagler:

Please review this draft carefully to ensure that it is consistent with your intent.

The drafting instructions were to replace the current definition of dentistry under s. 447.01 (8), stats., with the following language:

Dentistry is defined as the evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law.

Consistent with the drafting instructions, the draft repeals s. 447.01 (8) (a) to (h), stats., and amends the language of the general definition of dentistry under s. 447.01 (8) (intro.), stats., to include specific elements from the above proposed language. For the reasons I discuss below, however, not all of that language is represented in the draft.

1. We cannot use "and/or," or similar constructions, or parentheses in the statutes. That is fixed in the draft.
2. By defining dentistry as services provided by a dentist, the definition becomes circular because, under s. 447.01 (7), stats., a dentist is someone who practices dentistry. The circular definition is a problem in part because it renders unclear the prohibition against the unlicensed practice of dentistry, i.e., a person may not practice dentistry without being a licensed dentist, but now, by definition, a person is not practicing dentistry if the person is not a dentist. Therefore, it is better to continue to define dentistry based on the nature of the practice rather than the title of the practitioner. Please let me know how you would like to proceed.
3. The proposed language defining dentistry as being within the scope of a dentist's education, etc., and in accordance with the ethics of the profession is nondefinitional. Instead, that language presents substantive requirements—that a dentist must practice consistent with his or her professional education and controlling ethical

standards. LRB's general policy is to avoid putting substantive requirements in a definition because doing so makes it difficult to understand the requirements of the law and may lead to unintended consequences. For example, certainly someone who performs the acts of a dentist badly—who does not perform those acts within the scope of a satisfactory education and in accordance with the ethics of the profession—is not excluded from regulation by the Dentistry Examining Board. Yet the inclusion of that language in the definition confuses the law's meaning and the examining board's authority to discipline professional misconduct. Also, that language is unnecessary because the relevant substantive requirements already exist elsewhere in the statutes and administrative rules.

If your intent is to make specific changes to the substantive requirements for the practice of dentistry, then we should discuss your intent and how best to achieve that intent by amending the substantive legal requirements for the practice of dentistry in Wisconsin.

4. The current definition of dentistry in the statutes under s. 447.01 (8) (a) to (h) already contains most of the elements included in the proposed language. There are, however, significant exceptions. For example, under current law, surgery is not explicitly included under the definition of dentistry, although that definition can reasonably be interpreted to include surgery. In particular, see current s. 447.01 (8) (intro.), (f), and (g), stats. Consistent with the drafting instructions, the draft explicitly includes surgery.

5. What is more significant is that the definition of dentistry under current law does not include language extending the practice of dentistry, including surgery, to the "maxillofacial area." Consistent with the proposed language in the drafting instructions, the definition in this draft incorporates that additional element. Note, however, that by doing so, the draft expands or broadens the scope of dentistry in Wisconsin.

Under current law, dentistry is limited to "the human oral cavity or its adjacent tissues and structures." But, the human maxillofacial area is larger or includes more than "the human oral cavity or its adjacent tissues and structures." *Webster's* defines "maxillofacial" as "of, relating to, or treating the maxilla *and the face*" (my emphasis). The maxilla consist essentially of the upper jaw.

According to *Webster's*, the maxillofacial area includes the face, but the definition of dentistry under current law only includes the oral cavity itself or its adjacent tissues and structures, not the whole face. Therefore, for example, while procedures affecting the bones of the eye socket could not qualify as dentistry under current law because those bones are not adjacent to the oral cavity, procedures affecting the bones of the eye socket could be considered dentistry under the proposed language because the maxillofacial area includes the entire face. If you want to include a narrower definition of "maxillofacial area" for purposes of the definition of dentistry in this draft, please let me know. Also, let me know if, instead, you are satisfied with the language under current law limiting dentistry to the oral cavity and adjacent tissues and structures and want to remove "maxillofacial area" from the draft.

Please let me know how you would like to proceed with this request. I'd be happy to sit down and discuss any questions or concerns you may have.

Thank you.

Michael Gallagher  
Legislative Attorney  
Phone: (608) 267-7511  
E-mail: michael.gallagher@legis.wisconsin.gov

-1173

**Gallagher, Michael**

---

**From:** Florian, Mark  
**Sent:** Thursday, June 06, 2013 11:26 AM  
**To:** Gallagher, Michael  
**Subject:** FW: Def of Dentistry  
**Attachments:** MBrooks Notes for Drafter Meeting June 2013.doc

Hello Mike,

Please see the attached e-version of the notes provided at the meeting today. Thanks again for coming in to meet with us this morning!

All the best,

Mark

Mark Florian  
Office of Representative John Jagler  
37th Assembly District  
(608) 266-9650

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**From:** Mara Brooks [<mailto:mbrooks@wda.org>]  
**Sent:** Thursday, June 06, 2013 11:23 AM  
**To:** Rep.Jagler; Florian, Mark  
**Cc:** Jason Bauknecht; Mara Brooks  
**Subject:** Def of Dentistry

Rep. Jagler/Mark:

Here is an e-version of the document in case you wish to forward to Mr. Gallagher of the LRB - this version may make it easier for the drafter to review because it allows him to just click the referenced hyperlinks rather than have to copy them into a search engine. The meeting allowed for an important exchange of information and some dialogue on the key hang-ups - I look forward to seeing what the next version looks like - and I thank you. Mara

Mara Brooks  
Director of Government Services  
Wisconsin Dental Association  
10 East Doty Street, Suite 509  
Madison, WI 53703  
(608)250-3442 (p)  
(608)282-7716 (f)

ADA/WDA Proposed Definition:

Dentistry is defined as the evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical and related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law.

LRB Drafter Definition:

Dentistry means the examination, evaluation, diagnosis, prevention or treatment, including surgery, of diseases, disorders or conditions with the human oral cavity or its adjacent tissues and structures or the maxillofacial area.

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Questions of Author/Drafter:

(1) Why is the term "associated" removed from the draft? It is in the current definition (see 447.01(a)) and it is also in the ADA recommended definition.

(2) Why was the phrase "and their impact on the human body" not included as recommended in the ADA bill draft? With the advent of all the potential connections between gum disease and: (a) early-term pregnancies/low-birth weight births; (b) heart disease; and (c) diabetes, it seems like including this phrase is important if we want dentists to encourage patients to understand how the health of their oral cavity can negatively impact that of their entire body.

(3) "Surgery" may not be specifically stated in the current definition but it certainly seems to be covered by the fact that the current definition includes: "Penetrating, piercing or severing the tissues within the human oral cavity or adjacent associated structures." (see 447.01(8)(g)) This is not a departure from the current definition. Webster's Dictionary, "surgery" is defined as "a branch of medicine with diseases and conditions requiring or amenable to operative or manual procedures; alterations made as if by surgery; a physician's or dentist's office." The majority of dental procedures are, by their very nature, surgical; no other medical profession (including physicians with the exception of the surgical specialties) cut, penetrate, pierce or sever either hard or soft tissue as frequently as dentists do. For example, one of the most basic procedures performed by dentists includes the restoration of a diseased tooth - the basic restorative procedure (known by the public as simply filling cavities) is surgical in nature because a dentist must first surgically remove (drill out) the diseased tooth (hard tissue) structure before he/she can fill it with a material that will then aid in the halt of the spread of the disease and help preserve the remaining structure of the tooth.

(4) The current definition includes a reference to dentistry being diagnosis and treatment of "...diseases, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures." (see 447.01(8)(a)) The drafter made a comment that this bill *significantly* expands the current definition; we disagree because we believe the proposal simply takes that phrase and condenses it to read: "diseases, disorders or conditions of the oral cavity, maxillofacial area or adjacent and associated structures." The drafter further suggests that Rep. Jagler consider



removing the phrase "maxillofacial area" completely from the draft and limit dentistry to the "oral cavity and adjacent tissues and structures" - this would seem to be a step backwards from the current Wisconsin definition which already includes references to maxilla and mandible and adjacent associated structures. Furthermore, it dismisses the very nature by which dentistry encompasses oral and maxillofacial surgery. In Webster's Dictionary, under the illustrative quotation of "maxillofacial" the term "surgeon" is included; when you combine these terms, you'll find that an oral and maxillofacial surgeon is a specialist within dentistry, not medicine. In the online medical dictionary - <http://medical-dictionary.thefreedictionary.com/oral+and+maxillofacial+surgery> - specifically references and defines several medical surgical specialties and further states that that oral and maxillofacial surgery is a specialty of dentistry. For a more state-based view on this issue, please see the Medical College of Wisconsin's residency program in Oral and Maxillofacial surgery (<http://www.mcw.edu/oralsurgery.htm>); you'll note that the chief of MCW's oral and maxillofacial surgery department is a licensed dentist (noted by DDS after his name) and the requirements for applying for a residency at MCW include graduation from a US accredited dental school.

Oral and maxillofacial surgery is surgery to treat many diseases, injuries and defects in the head, neck, face, jaws and the hard and soft tissues of the oral (mouth) and maxillofacial (jaws and face) region. It is an internationally recognized surgical specialty. In some countries, including the United States, it is a recognized specialty of dentistry (see the nine recognized specialties of the dental profession - three of which have the term "maxillofacial" in their title at <http://www.ada.org/495.aspx>); in other countries, it is recognized as a medical specialty. The term "maxillofacial" should be included in the definition of dentistry because, at least in the United States, it is the profession of dentistry (rather than medicine - see listing on this website [http://www.abms.org/who we help/physicians/specialties.aspx](http://www.abms.org/who_we_help/physicians/specialties.aspx) to understand that oral and maxillofacial surgery is not a medically recognized specialty) that serves as the professional home for oral and maxillofacial surgeons. In Wisconsin, these surgeons have been, and continue to be, licensed and regulated by the Dentistry Examining Board.

(5) The drafter has excluded any reference to the scope of a dentist's education, training and experience. It might be helpful to better understand why the removal of this phrase is important despite the fact that the current definition includes the statement "engaging in any of the practices, techniques or procedures included in the curricula of accredited dental schools" (see 447.01(8)(f)). Is there a problem with this phrase in the current definition? If not, is there a better way to make a reference to one's education, training and experience than what has been recommended by the ADA without completely dropping all references from the draft?



In: 6/26 5007. Thanks  
State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1173 PD

MPG:eev:rs

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1P2

Inserts

1 AN ACT <sup>reg</sup>to repeal 447.01 (8) (a), 447.01 (8) (b), 447.01 (8) (c), 447.01 (8) (d), 447.01  
2 (8) (e), 447.01 (8) (f), 447.01 (8) (g) and 447.01 (8) (h); and to renumber and  
3 amend 447.01 (8) (intro.) of the statutes; relating to: the definition of  
4 dentistry for professional licensing purposes.

*Analysis by the Legislative Reference Bureau*

*This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.*

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

5 SECTION 1. 447.01 (8) (intro.) of the statutes is renumbered 447.01 (8) and  
6 amended to read:

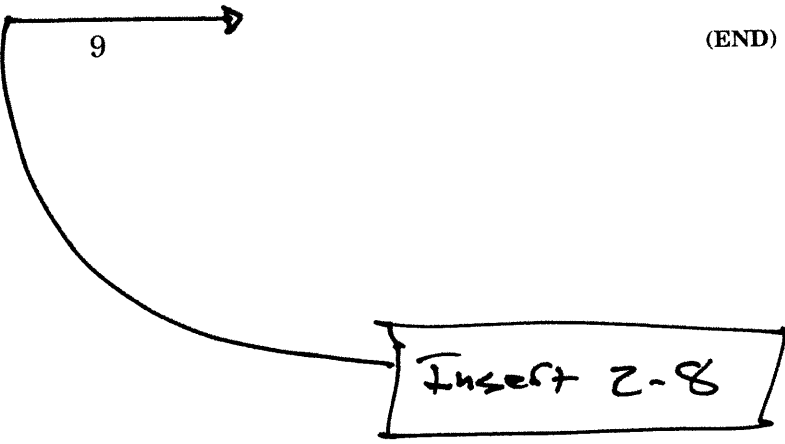
7 447.01 (8) "Dentistry" means the examination, evaluation, diagnosis,  
8 prevention, or treatment, planning or care including surgery, of diseases, disorders,  
9 or conditions within the human oral cavity or its adjacent tissues and structures or  
10 the maxillofacial area. "Dentistry" includes any of the following:

Insert 1-6

- 1           SECTION 2. 447.01<sup>✓</sup> (8) (a) of the statutes is repealed.
- 2           SECTION 3. 447.01<sup>✓</sup> (8) (b) of the statutes is repealed.
- 3           SECTION 4. 447.01<sup>✓</sup> (8) (c) of the statutes is repealed.
- 4           SECTION 5. 447.01<sup>✓</sup> (8) (d) of the statutes is repealed.
- 5           SECTION 6. 447.01<sup>✓</sup> (8) (e) of the statutes is repealed.
- 6           SECTION 7. 447.01<sup>✓</sup> (8) (f) of the statutes is repealed.
- 7           SECTION 8. 447.01<sup>✓</sup> (8) (g) of the statutes is repealed.
- 8           SECTION 9. 447.01<sup>✓</sup> (8) (h) of the statutes is repealed.

9

(END)



Insert 2-8

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1173/P2ins  
MPG:eev:rs

1           INSERT Analysis

2           END INSERT A

Generally, under current law, to practice dentistry in Wisconsin, a person must be licensed as a dentist by the Dentistry Examining Board. Current law defines "dentistry" as "the examination, diagnosis, treatment, planning or care of conditions within the human oral cavity or its adjacent tissues and structures." The definition of dentistry under current law further specifies a number of activities that constitute dentistry, including extracting teeth or correcting their malposition; prescribing or administering drugs, including anesthetics, in conjunction with providing purported dental services; engaging in any of the practices, techniques, or procedures included in the curricula of accredited dental schools; or penetrating, piercing, or severing the tissues within the human oral cavity or adjacent associated structures.

This bill replaces that definition and defines "dentistry" to mean "the examination, evaluation, diagnosis, prevention, or treatment, including surgery, of diseases, disorders, or conditions of the human oral cavity or its adjacent or associated tissues and structures, or of the maxillofacial area, and their impact on the human body."

The bill also provides that a licensed dentist may not perform dental services that are outside the scope of the dentist's education, training, and experience, and the bill excludes from the dentistry licensing requirement any physician who is licensed in this state to the extent that the physician is acting within the scope of his or her license. Current law excludes a physician only to the extent that he or she extracts teeth or performs other activities specified by statute.

3           End Insert Analysis

4           INSERT 1-6

4           447.01 (8) "Dentistry" means the examination, evaluation, diagnosis,  
5           prevention, or treatment, planning or care including surgery, of diseases, disorders,  
6           or conditions within of the human oral cavity or its adjacent or associated tissues and  
7           structures. "Dentistry" includes any of the following: or of the maxillofacial area,  
8           and their impact on the human body.

\*\*\*\*NOTE: The above language reaches tissues and structures that are *either* adjacent to *or* associated with the oral cavity. Please let me know if that is not consistent with the intent.

9           END INSERT 1-6

10          INSERT 2-8

X

SECTION 1. 447.03 (3) (h) of the statutes is amended to read:

447.03 (3) (h) A physician ~~or surgeon licensed in this state who extracts teeth,~~  
~~or operates upon the palate or maxillary bones and investing tissues, or who~~  
~~administers anesthetics, either general or local~~ under subch. II of ch. 448 acting  
within the scope of his or her license.

History: 1989 a. 349 ss. 15, 18; 1997 a. 96; 2005 a. 96; 2009 a. 10, 42; 2011 a. 258.

SECTION 2. 447.06 (1m) of the statutes is created to read:

447.06 (1m) A dentist licensed under this chapter may not perform dental  
services that are outside the scope of the dentist's education, training, and  
experience.

\*\*\*\*NOTE: I did not include an exclusion for dental hygienists. Under current law,  
under s. 447.01 (8) (h) (repealed in the draft), the definition of "dentistry" includes  
"[d]eveloping a treatment plan for a dental patient to treat, operate, prescribe or advise  
for the patient by any means or instrumentality." That paragraph further provides,  
"Nothing in this paragraph prohibits a dental hygienist from participating in the  
development of a dental patient's dental hygiene treatment plan." However, that is  
redundant. Under s. 447.01 (3) (f), "dental hygiene," which is what a dental hygienist  
practices under ch. 447, includes "[p]articipating in the development of a dental patient's  
dental hygiene treatment plan." Also, ch. 447 carves out the scope of a dental hygienist's  
practice, making an exception to the dentistry licensing requirement under ch. 447 for  
dental hygienists unnecessary, and perhaps confusing. Do you still want to include such  
an exception?

END INSERT 2-9

## Gallagher, Michael

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**From:** Florian, Mark  
**Sent:** Monday, September 30, 2013 3:00 PM  
**To:** Gallagher, Michael  
**Subject:** LRB-1173: Dentistry Definition Draft

Good afternoon Mike,

I hope that this message finds you well. We'd like to make another change to the preliminary draft for LRB 1173: if possible, we would like to see the "may not perform outside the scope of the dentist's education, training, and experience" language in section 11 of the bill included in the section 1 definition. We realize that it may be redundant language, but if it doesn't cause any issues it would be preferable to have it included in section 1.

Let me know if there are any issues with this request.

Thanks and all the best,

Mark

Mark Florian  
Office of Representative John Jagler  
37th Assembly District  
(608) 266-9650

## Gallagher, Michael

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**From:** Gallagher, Michael  
**Sent:** Monday, September 16, 2013 12:55 PM  
**To:** Florian, Mark  
**Subject:** RE: Definition of Dentistry Bill Language - Potential Tweak

Mark: I am going to copy below the language from my January 15 e-mail to you that addresses this issue. Placing this non-definitional language in the definition would make the requirements of the law unclear vis-à-vis conduct that falls outside "compliance with the limitations set forth in 447.06 (1m)." That is why the draft creates s. 447.06 (1m)—to set forth the intent concerning the requirement that a dentist's practice must be within the scope of his or her education, training, and experience, without muddying the waters by including that requirement in a definition. Please let me know if you have any questions or need any further clarification. Thanks. Mike

Second, the education and ethics language is non-definitional, i.e. those are substantive requirements, and those requirements are already set forth elsewhere in the chapter. We avoid putting that kind of language in definitions because it makes the actual substantive requirements of the law unclear. Here is how that happens: "Dentist" is defined in the statute as "an individual who practices dentistry." Therefore, if we limit the definition of dentistry to acts performed "by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law," as proposed in the attachment, not only do the definitions become circular, i.e. a dentist is someone who practices dentistry and dentistry is the practice of a dentist, but the proposed language also raises the question of whether the board can discipline a dentist for conduct that is not "within the scope of his/her education, training and experience" or "in accordance with the ethics of the profession and applicable law," i.e. professional misconduct, because we've, by definition, removed such conduct from the scope of the practice of dentistry, which is what the board regulates. Also, note that if you limit the definition of dentistry to good dentistry, as the proposed language seems to do, then someone who is not licensed to practice dentistry can perform bad dentistry without running afoul of the statute. That is a serious unintended consequence of the proposed language.

**Mike Gallagher**  
Attorney  
Wisconsin Legislative Reference Bureau  
(608) 267-7511

---

**From:** Florian, Mark  
**Sent:** Monday, September 16, 2013 9:38 AM  
**To:** Gallagher, Michael  
**Subject:** FW: Definition of Dentistry Bill Language - Potential Tweak

Hello Michael,

I hope that this message finds you well. Would you have any thoughts on the tweak outlined below for the dentistry definition bill draft? We really appreciate your assistance!

Thanks and all the best,

Mark

Mark Florian

Office of Representative John Jagler  
37th Assembly District  
(608) 266-9650

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**From:** Mara Brooks [<mailto:mbrooks@wda.org>]  
**Sent:** Friday, September 13, 2013 3:00 PM  
**To:** Florian, Mark  
**Cc:** Jason Bauknecht ([jbauknecht@hwz-gov.com](mailto:jbauknecht@hwz-gov.com)); Mara Brooks  
**Subject:** Definition of Dentistry Bill Language - Potential Tweak

Mark:

Hi - happy Friday/weekend - hope you are well. I wanted to let you know that we met with the WI Medical Society last week and we share the attached draft with them (per the discussion I had with you previously) - and they had some questions for us which I think we responded to but they are going to get back to us later (but hopefully in the coming weeks) with their exact position on this issue.

In the meantime, one thing that did come up in the meeting regarding the bill draft was a concern that dentists looking at the definition will not automatically see the clause regarding the need to stay within their education, training and experience. We agreed that the two sections were separated and WMS suggested we approach the drafter about adding in a cross-reference so it 447.01(8) would read something like this:

***Dentistry means the examination, evaluation, diagnosis, prevention, or treatment, including surgery, of diseases, disorders or conditions of the human oral cavity or its adjacent or associated tissues and structures, or of the maxillofacial area, and their impact on the human body in compliance with [the limitations set forth in] s. 447.06 (1m).***

Is this something you could run by the drafter and see what he thinks? Obviously we want to minimize opposition and this seems to make sense from our standpoint. Let me know your thoughts. As I said, the WMS position is still not known for sure but as soon as I hear from them, I'll let you know what they say - in the meantime, this change is something we believe will be more consistent with our intent. Thanks! Mara

Mara Brooks  
Director of Government Services  
Wisconsin Dental Association  
10 East Doty Street, Suite 509  
Madison, WI 53703  
(608)250-3442 (p)  
(608)282-7716 (f)





PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Gen Cat

193

SH  
x-100

1 AN ACT *to repeal* 447.01 (8) (a), 447.01 (8) (b), 447.01 (8) (c), 447.01 (8) (d), 447.01  
2 (8) (e), 447.01 (8) (f), 447.01 (8) (g) and 447.01 (8) (h); *to renumber and amend*  
3 447.01 (8) (intro.); *to amend* 447.03 (3) (h); and *to create* 447.06 (1m) of the  
4 statutes; **relating to:** the definition of dentistry for professional licensing  
5 purposes. and practice

***Analysis by the Legislative Reference Bureau***

Generally, under current law, to practice dentistry in Wisconsin, a person must be licensed as a dentist by the Dentistry Examining Board. Current law defines "dentistry" as "the examination, diagnosis, treatment, planning or care of conditions within the human oral cavity or its adjacent tissues and structures." The definition of dentistry under current law further specifies a number of activities that constitute dentistry, including extracting teeth or correcting their malposition; prescribing or administering drugs, including anesthetics, in conjunction with providing purported dental services; engaging in any of the practices, techniques, or procedures included in the curricula of accredited dental schools; or penetrating, piercing, or severing the tissues within the human oral cavity or adjacent associated structures.

This bill replaces that definition and defines "dentistry" to mean "the examination, evaluation, diagnosis, prevention, or treatment, including surgery, of diseases, disorders, or conditions of the human oral cavity or its adjacent or associated tissues and structures, or of the maxillofacial area, and their impact on the human body."

relevant

The bill also provides that a licensed dentist may not perform dental services that are outside the scope of the dentist's education, training, and experience, and the bill excludes from the dentistry licensing requirement any physician who is licensed in this state to the extent that the physician is acting within the scope of his or her license. Current law excludes a physician only to the extent that he or she extracts teeth or performs other activities specified by statute.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1 SECTION 1. 447.01 (8) (intro.) of the statutes is renumbered 447.01 (8) and  
2 amended to read: (am)

3 447.01 (8) "Dentistry" means the examination, evaluation, diagnosis,  
4 prevention, or treatment, planning or care including surgery, of diseases, disorders,  
5 or conditions within of the human oral cavity or its adjacent or associated tissues and  
6 structures. "Dentistry" includes any of the following: or of the maxillofacial area,  
7 and their impact on the human body.

\*\*\*\*NOTE: The above language reaches tissues and structures that are *either* adjacent to *or* associated with the oral cavity. Please let me know if that is not consistent with the intent.

8 SECTION 2. 447.01 (8) (a) of the statutes is repealed.

9 SECTION 3. 447.01 (8) (b) of the statutes is repealed.

10 SECTION 4. 447.01 (8) (c) of the statutes is repealed.

11 SECTION 5. 447.01 (8) (d) of the statutes is repealed.

12 SECTION 6. 447.01 (8) (e) of the statutes is repealed.

13 SECTION 7. 447.01 (8) (f) of the statutes is repealed.

14 SECTION 8. 447.01 (8) (g) of the statutes is repealed.

15 SECTION 9. 447.01 (8) (h) of the statutes is repealed.

16 SECTION 10. 447.03 (3) (h) of the statutes is amended to read:

Insert A

1

1 447.03 (3) (h) A physician ~~or surgeon~~ licensed in this state who extracts teeth,  
2 ~~or operates upon the palate or maxillary bones and investing tissues, or who~~  
3 ~~administers anesthetics, either general or local~~ under subch. II of ch. 448 acting  
4 within the scope of his or her license. (bm)

5 SECTION 11. 447.06 (1m) of the statutes is created to read:

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7 services that are outside the scope of the dentist's education, training, and  
8 experience. relevant

9 1  
\*\*\*\*NOTE: I did not include an exclusion for dental hygienists. Under current law,  
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for the patient by any means or instrumentality." That paragraph further provides,  
"[N]othing in this paragraph prohibits a dental hygienist from participating in the  
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practice, making an exception to the dentistry licensing requirement under ch. 447 for  
dental hygienists unnecessary, and perhaps confusing. Do you still want to include such  
an exception?

9 (END)

This is Insert A  
<move it to page 2>

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1173/P3dn

MPG:ccv:rs

*g's*

*- date -*

Representative Jagler:

Please review this draft carefully to ensure that it is consistent with your intent.

As you requested, in this draft, I included a paragraph under the definition of "dentistry" that prohibits a dentist from performing dental services that are outside the scope of the dentist's relevant education, training, and experience. As I have mentioned, it is against LRB policy to put that kind of language in a definition. There are a number of reasons for that policy. For an explanation of those reasons, please see my February 18, 2013 drafter's note and my e-mail correspondence with Mark Florian on this issue.

If you have any questions, please do not hesitate to contact me.

Thank you.

Michael Gallagher  
Legislative Attorney  
Phone: (608) 267-7511  
E-mail: michael.gallagher@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1173/P3dn  
MPG:cjs:rs

October 9, 2013

Representative Jagler:

Please review this draft carefully to ensure that it is consistent with your intent.

As you requested, in this draft, I included a paragraph under the definition of "dentistry" that prohibits a dentist from performing dental services that are outside the scope of the dentist's relevant education, training, and experience. As I have mentioned, it is against LRB policy to put that kind of language in a definition. There are a number of reasons for that policy. For an explanation of those reasons, please see my February 18, 2013, drafter's note and my e-mail correspondence with Mark Florian on this issue.

If you have any questions, please do not hesitate to contact me.

Thank you.

Michael Gallagher  
Legislative Attorney  
Phone: (608) 267-7511  
E-mail: michael.gallagher@legis.wisconsin.gov

## Gallagher, Michael

---

**From:** Florian, Mark  
**Sent:** Thursday, November 07, 2013 1:12 PM  
**To:** Gallagher, Michael  
**Subject:** RE: LRB-1173: Dentistry Definition Draft

Hello Mike,

I hope that this message finds you well. It looks like we're ready to go for a /1 draft for LRB 1173. Please let me know if you have any questions or concerns. Sen. Farrow's office will be drafting a Senate companion to the bill and should be contacting you shortly about it.

Thanks and all the best,

Mark

Mark Florian  
Office of Representative John Jagler  
37th Assembly District  
(608) 266-9650

---

**From:** Gallagher, Michael  
**Sent:** Wednesday, October 02, 2013 1:14 PM  
**To:** Florian, Mark  
**Subject:** RE: LRB-1173: Dentistry Definition Draft

That sounds good. Thanks.

Mike

**Mike Gallagher**  
Attorney  
Wisconsin Legislative Reference Bureau  
(608) 267-7511

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**From:** Florian, Mark  
**Sent:** Wednesday, October 02, 2013 1:03 PM  
**To:** Gallagher, Michael  
**Subject:** RE: LRB-1173: Dentistry Definition Draft

Hello Mike,

Mara Brooks from the Wisconsin Dental Association, who you initially met with in our office to discuss the draft language, would like to follow up regarding the potential change to the draft. I will pass along your contact information so that she can contact you. If there are any issues that still need to be resolved I would be happy to set up a meeting, just let me know. We really appreciate your help with this draft.

Thanks and all the best,

Mark

Mark Florian  
Office of Representative John Jagler  
37th Assembly District  
(608) 266-9650

---

**From:** Gallagher, Michael  
**Sent:** Wednesday, October 02, 2013 12:21 PM  
**To:** Florian, Mark  
**Subject:** RE: LRB-1173: Dentistry Definition Draft

Mark:

Can we set up a meeting to discuss this language?

Thanks.

Mike

**Mike Gallagher**  
Attorney  
Wisconsin Legislative Reference Bureau  
(608) 267-7511

---

**From:** Florian, Mark  
**Sent:** Monday, September 30, 2013 3:00 PM  
**To:** Gallagher, Michael  
**Subject:** LRB-1173: Dentistry Definition Draft

Good afternoon Mike,

I hope that this message finds you well. We'd like to make another change to the preliminary draft for LRB 1173: if possible, we would like to see the "may not perform outside the scope of the dentist's education, training, and experience" language in section 11 of the bill included in the section 1 definition. We realize that it may be redundant language, but if it doesn't cause any issues it would be preferable to have it included in section 1.

Let me know if there are any issues with this request.

Thanks and all the best,

Mark

Mark Florian  
Office of Representative John Jagler  
37th Assembly District

(608) 266-9650





**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1

No changes

regen

1 AN ACT *to repeal* 447.01 (8) (a), 447.01 (8) (b), 447.01 (8) (c), 447.01 (8) (d), 447.01  
2 (8) (e), 447.01 (8) (f), 447.01 (8) (g) and 447.01 (8) (h); *to renumber and amend*  
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4 statutes; **relating to:** the definition and practice of dentistry for professional  
5 licensing purposes.

***Analysis by the Legislative Reference Bureau***

Generally, under current law, to practice dentistry in Wisconsin, a person must be licensed as a dentist by the Dentistry Examining Board. Current law defines "dentistry" as "the examination, diagnosis, treatment, planning or care of conditions within the human oral cavity or its adjacent tissues and structures." The definition of dentistry under current law further specifies a number of activities that constitute dentistry, including extracting teeth or correcting their malposition; prescribing or administering drugs, including anesthetics, in conjunction with providing purported dental services; engaging in any of the practices, techniques, or procedures included in the curricula of accredited dental schools; or penetrating, piercing, or severing the tissues within the human oral cavity or adjacent associated structures.

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---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 447.01 (8) (intro.) of the statutes is renumbered 447.01 (8) (am) and  
2 amended to read:

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5 or conditions within of the human oral cavity or its adjacent or associated tissues and  
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10       **SECTION 4.** 447.01 (8) (bm) of the statutes is created to read:

11       447.01 (8) (bm) A dentist licensed under this chapter may not perform dental  
12 services that are outside the scope of the dentist's relevant education, training, and  
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17       **SECTION 8.** 447.01 (8) (f) of the statutes is repealed.

18       **SECTION 9.** 447.01 (8) (g) of the statutes is repealed.

19       **SECTION 10.** 447.01 (8) (h) of the statutes is repealed.

**SECTION 11.** 447.03 (3) (h) of the statutes is amended to read:

447.03 (3) (h) A physician ~~or surgeon~~ licensed in this state who extracts teeth, or operates upon the palate or maxillary bones and investing tissues, or who administers anesthetics, either general or local under subch. II of ch. 448 acting within the scope of his or her license.

**(END)**

**Barman, Mike**

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**From:** Rep.Jagler  
**Sent:** Thursday, November 14, 2013 2:09 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1173/1 Topic: Changes to statutory definition of dentistry

Please Jacket LRB -1173/1 for the ASSEMBLY.

## **Gallagher, Michael**

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**From:** Gallagher, Michael  
**Sent:** Monday, December 02, 2013 10:58 AM  
**To:** Florian, Mark  
**Subject:** RE: Question: Dentistry Definition Bill

Mark:

I hope you had a good holiday too.

The treatment of s. 447.03 (3) (h) cleans up the exemption for physicians. It does not remove surgeons from coverage under that exemption.

The "or surgeon" language is surplusage because, as you note, there is no separate licensure for surgeons. Instead, a physician licensed under subch. II of ch. 448 is licensed to engage in "the practice of medicine and surgery." Under the draft, a licensed physician is exempt from licensure as a dentist for anything that the physician (including a surgeon) does that is "within the scope of his or her license." That language is standard.

I hope this e-mail answers your question. Let me know if you need anything further on this issue.

Mike

**Mike Gallagher**  
Attorney  
Wisconsin Legislative Reference Bureau  
(608) 267-7511

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**From:** Florian, Mark  
**Sent:** Monday, December 02, 2013 10:36 AM  
**To:** Gallagher, Michael  
**Subject:** Question: Dentistry Definition Bill

Hello Mike,

I hope that this message finds you well and that you had a nice holiday. I have a quick question for you regarding the Dentistry Definition Bill (LRB 1173).

Regarding the changes made in the bill to who is excluded from being required to obtain a dentistry license: the new statute would not cover surgeons as the current one does. Why is this?

My understanding is that there is no separate licensure for surgeons as all MDs are licensed as physicians regardless of whether or not they are surgeons or GPs or dermatologists etc...

Any clarity would be very helpful!

Thanks and all the best,

Mark

Mark Florian  
Office of Representative John Jagler

37th Assembly District  
(608) 266-9650